

Region 8 Congressional and Intergovernmental Weekly Report
For the Week Ending December 24, 2016

1. Past Week's Happenings:

2. Hearings/Meetings/Notifications/Roll Outs:

12/20: U.S. EPA Notice of Action: EPA, DOJ Announce Second Partial VW Settlement

The U.S. Environmental Protection Agency (EPA), the Department of Justice (DOJ), and the State of California announced a second partial settlement with German automakers Volkswagen AG, Audi AG, Porsche AG and related entities (collectively referred to as Volkswagen). Under the partial settlement, VW has agreed to recall 83,000 model year 2009 through 2016 3.0 liter diesel vehicles sold or leased in the U.S. that are alleged to be equipped with “defeat devices” to cheat emissions tests, in violation of the Clean Air Act and California law. For the older vehicles, Volkswagen is required to offer to buy back the vehicles or terminate leases, and must also offer an emissions modification to substantially reduce emissions if one is proposed by Volkswagen and approved by regulators. For the newer vehicles, if Volkswagen demonstrates it can make the vehicles compliant with the certified exhaust emission standards, it will have to fix the vehicles and will not be required to buy the vehicles back. VW is also required to spend \$225 million to fund projects that will reduce emissions of nitrogen oxide (NOx).

The settlement requires Volkswagen to pay \$225 million to fund projects across the country that will reduce emissions of NOx where the 3.0 liter vehicles were, are or will be operated. This funding is intended to fully mitigate the past and future NOx emissions from the 3.0 liter vehicles. That money will be placed in the same mitigation trust to be established under the partial settlement for the 2L vehicles. This \$225 million is in addition to the \$2.7 billion that Volkswagen is required to pay into that trust under the prior settlement. The mitigation trust will be administered by an independent trustee. Beneficiaries, which may include states, Puerto Rico, the District of Columbia, and Indian tribes, may obtain funds for designated NOx reduction projects upon application to the trustee. **This second partial settlement does not alter the structure of the mitigation trust.**

More information on the second partial VW settlement is available here:

<https://www.epa.gov/enforcement/volkswagen-clean-air-act-partial-settlements>

A table showing the amount of additional funds available to states, tribes, Puerto Rico, and the District of Columbia is available on p.164 of the second partial consent decree:

<https://www.epa.gov/sites/production/files/2016-12/documents/30literpartialconsentdecree.pdf>

12/20: Response to Petitions for Ultra-low NOx Standards for On-road Heavy-duty Trucks and Engines

EPA is responding to petitions submitted by 20 state and local government agencies from across the country and other organizations for ultra-low NOx standards for on-road heavy-duty trucks

and engines. EPA's response acknowledges that there is a need for further NOx reductions from heavy duty on-road trucks, buses, and other vehicles to reduce adverse health impacts from ground-level ozone and microscopic airborne particles; that the Clean Air Act directs EPA to revise standards from time-to-time in order to protect public health; and that it has been 16 years since EPA last revised its NOx standards for heavy-duty highway engines. Technical progress has been made in developing technologies and approaches that can reduce NOx emissions beyond the standards put in place in the 2000 rule. As a result, the EPA will initiate the work necessary to issue a Notice of Proposed Rulemaking with the intention of proposing standards that could begin in Model Year 2024. This timeframe is consistent with the lead-time requirements of the Clean Air Act, and is aligned with a milestone implementation year for the EPA heavy-duty Phase 2 GHG program.

For more information, visit: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/petitions-revised-nox-standards-highway-heavy-duty>

12/21: EPA is releasing a six-year review of drinking water standards, as required by the Safe Drinking Water Act.

Under the Safe Drinking Water Act, EPA must conduct a review every six years of existing national primary drinking water regulations and determine which, if any, need to be revised. The purpose of this review, called the Six-Year Review, is to evaluate current information for regulated contaminants to determine if there is new information on health effects, treatment technologies, analytical methods, occurrence and exposure, implementation, or other factors that provide a health or technical basis to support a regulatory revision that will improve public health protection.

Based on the agency's detailed review of 76 regulations, EPA concluded that eight national primary drinking water standards within several of its rules are candidates for regulatory revision. The eight candidates are Chlorite, Cryptosporidium (under three of the agency's rules, but not its LT2 rule), Haloacetic acids, Heterotrophic Bacteria, Giardia lamblia, Legionella, Total Trihalomethanes, and Viruses (under the surface water treatment rule). EPA determined that for the contaminants regulated under these rules, new information on health effects, treatment technologies, analytical methods, occurrence and exposure, implementation, or other factors may provide a health or technical basis to support a regulatory revision that will improve public health protection. The 76 rules reviewed here do not include regulations with recent, ongoing, or pending regulatory actions, such as the agency's lead and copper rule.

The EPA is not planning to revise its Long Term 2 Enhanced Surface Water Treatment Rule (LT2) or its regulations related to fluoride or chloramine.

This announcement is not a regulatory decision. Instead, it initiates a process that will involve more detailed analyses of health effects, analytical and treatment feasibility, occurrence, benefits, costs and other regulatory matters relevant to deciding whether a rulemaking to revise a regulation should be initiated. EPA will be seeking public comment and information to help inform future regulatory revisions for the eight candidates.

More information on this six-year review is posted on EPA's website at <https://www.epa.gov/dwsixyearreview>. The Federal Register notice will be published in the coming days.

3. Legislative Updates:

Congress is in recess until January 3, 2017.

12/5: Overview of EPA-Relevant Sections of S. 612, the Water Resources Development Act of 2016, and Corresponding Drinking Water Sections of H.R. 2028, the FY2017 Continuing Resolution

The week of December 5, both the House and Senate passed S. 612, the Water Infrastructure Improvements for the Nation Act (WIIN) of 2016. The bill reflects a House-Senate compromise between the Water Resources Development Acts (WRDAs) passed by the House and Senate earlier in 2016. WRDA is typically a legislative vehicle that focuses on authorizing U.S. Army Corps of Engineers water resources projects. The final bill includes more EPA-relevant elements than a typical WRDA – including lead in drinking water, WIFIA funding, geographic programs, and other unrelated areas – but is narrower than the bill passed by the Senate over the summer. With regard to Gold King Mine, WRDA extends the eligibility of response claims from October 2015 to September 2016. Also, subject to the availability of appropriations, WRDA requires EPA to develop and implement a long-term water quality monitoring program in coordination with affected states, tribes, and local governments.

Unlike the earlier Senate bill, the final bill does not provide any direct spending. Funding for Flint (\$100m) and for the WIFIA program (\$20m) were provided by the continuing resolution signed by President Obama on December 10 (H.R. 2028)

4. New or Outstanding Letters/Correspondence:

New Correspondence:

12/19: Sen. Thune's (SD) staff forwarded a letter from a concerned citizen regarding Region 8's plan to issue a draft permit for four Class 111 and eight Class V injection wells at the Dewey Burdock Area north of Edgemont, South Dakota on behalf of Powertech. Concerns include impacts to drinking water aquifers, old boreholes that haven't been closed, contamination from injected waste and earthquake risk. We replied to the citizen and cc'd the staffer that EPA will contact them when we issue our draft permit decisions. During the public comment period the Administrative Record will be available for public review. We requested that they review this information when it becomes available, as it may address their concerns. To the extent that it does not, we encouraged them to provide their comments and concerns during the public comment period. We also said that we plan to include the citizen's letter as part of the public record for these UIC permitting actions.

12/20: U.S. Senator Cory Gardner (R-CO), along with Congressman Scott Tipton (CO-3), sent a letter to EPA Administrator Gina McCarthy today regarding the agency's decision not to fully

reimburse affected states, local, and tribal governments that have been impacted by the EPA-born Gold King Mine disaster. In the letter, Gardner and Tipton reminded Administrator McCarthy of a section of the Water Infrastructure Improvements for the Nation Act (WIIN Act) they authored that requires the EPA to fully reimburse all state, local, and tribal government for response costs, regardless of the arbitrary deadline the EPA imposed on such payments.

https://www.gardner.senate.gov/newsroom/press-releases/gardner-tipton-demand-epa-reimburse-communities-impacted-by-gold_king-mine-spill

Outstanding Requests:

10/3: Sen. Hoven (ND) addressed a letter to the Administrator to promptly consider and approve the application for ND state primacy regulatory authority over class VI injection wells as established under section 1422 of the Safe Drinking Water Act.

8/11: Congressman Cramer (ND) addressed a letter to the Administrator on North Dakota's application for state primacy over the Class VI injection well activities. In the letter the Congressman asks what work has been completed, what work remains unfinished, why hasn't a decision been made, and when does EPA anticipate a decision being made?

Sent Items:

5. Congressionals and Other Elected Officials in the News:

TRANSITION

Trump pledges 'open mind' on environment

Robin Bravender, E&E News reporter

Published: Monday, December 12, 2016

<http://www.eenews.net/eedaily/2016/12/12/stories/1060046993>

LAW

No need for broad climate analysis in oil and gas leasing — Interior

Ellen M. Gilmer, E&E News reporter

Published: Wednesday, December 21, 2016

<http://www.eenews.net/energywire/2016/12/21/stories/1060047505>

OIL AND GAS

BLM commits to develop lease plan near Colo. national park

Scott Streater, E&E News reporter

Published: Tuesday, December 20, 2016

<http://www.eenews.net/greenwire/2016/12/20/stories/1060047477>

POLITICS

Trump supporters favor maintaining climate policy — poll

Jennifer Yachnin, E&E News reporter

Published: Tuesday, December 20, 2016

<http://www.eenews.net/eenewspm/2016/12/20/stories/1060047493>

SUPREME COURT

5 ways Trump could reshape environmental law

Amanda Reilly and Robin Bravender, E&E News reporters

Published: Monday, December 19, 2016

<http://www.eenews.net/greenwire/2016/12/19/stories/1060047400>

LAW

Immigration foes try to turn NEPA into a border wall

Amanda Reilly, E&E News reporter

Published: Monday, December 19, 2016

<http://www.eenews.net/greenwire/2016/12/19/stories/1060047396>

COAL

Obama preserves Colorado roadless exception

Dylan Brown, E&E News reporter

Published: Friday, December 16, 2016

<http://www.eenews.net/greenwire/2016/12/16/stories/1060047347>

REGULATIONS

Aide confirms GOP strategy to kill rules

Arianna Skibell, E&E News reporter

Published: Thursday, December 15, 2016

<http://www.eenews.net/eenewspm/2016/12/15/stories/1060047289>